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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTINA SULLIVAN, a single
person,

Plaintiff,

v.

DOLLAR TREE STORES, INC., a
Virginia Corporation, doing business in
Washington.

Defendant.

No. CV-07-5020-EFS

MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION
FOR PROTECTIVE ORDER

I. NATURE OF CASE & RELIEF SOUGHT

The discovery cut-off in this case expires on January 25, 2008. Just days before that cut-off expired, on January 21, 2008, Plaintiff, apparently realizing she had not conducted any discovery and that the deadline for sending interrogatories and requests for production

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1 had already expired, noted a Rule 30(b)(6) deposition for January 25, 2008, imposing on
 2 Dollar Tree the significant expense and burden of traveling to Virginia and preparing
 3 multiple witnesses to testify to Dollar Tree's collective knowledge on multiple topics, which
 4 are not properly defined and focused within Rule 30(b)(6) and which could, and should,
 5 long since have been addressed in inexpensive document production. Dollar Tree seeks a
 6 protective order precluding Plaintiff from conducting a Rule 30(b)(6) deposition because
 7 the three-days notice it provided is unreasonable and because the discovery Plaintiff seeks
 8 could have been obtained through more efficient, less burdensome means.
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11 II. FACTS

12 A statement of the relevant facts are set forth in the accompanying declaration of
 13 Geana M. Van Dessel, and by reference are incorporated herein.
 14

15 III. ARGUMENT

16 A. Plaintiff's Amended Deposition Notice Is Untimely And Unduly 17 Burdensome.

18 Plaintiff's amended deposition notice provided Dollar Tree with only three days in
 19 which to prepare witnesses for a Rule 30(b)(6) deposition naming 10 topics on which
 20 witnesses are expected to give binding testimony on behalf of the corporation. The topics
 21 are not narrowly focused and defined; rather they are essentially "contention" discovery¹ and
 22

23 ¹ For example, Plaintiff's Amended Deposition Notice identifies broad topics such

1 inquiry into matters one would expect in normal circumstances to be covered with document
 2 discovery (i.e., pay stubs, personnel file, and work schedules). This method of discovery
 3 (which was likely selected only because all deadlines have run on other discovery) is
 4 unreasonably burdensome, and the time-frame is unreasonable, in light of the considerable
 5 obligations that a Rule 30(b)(6) deposition imposes on a corporation.
 6

7 A Rule 30(b)(6) imposes an affirmative duty on Dollar Tree to designate multiple
 8 witnesses to testify "as to matters known or reasonably available" to Dollar Tree. The duty
 9 to testify "as to matters known or reasonably available" implicitly requires designated
 10 persons to review all matters known or reasonably available to them in preparation for a
 11 Rule 30(b)(6) deposition. *See United States v. Taylor*, 166 F.R.D. 356, 361-62
 12 (D.N.C.1996) ("[T]he duty to present and prepare a Rule 30(b)(6) designee goes beyond
 13 matters personally known to that designee or to matters in which that designee was
 14 personally involved.") (citations omitted). Under Rule 30(b)(6), Dollar Tree is required to
 15 "make a conscientious good-faith endeavor to designate the persons having knowledge of
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19 as: (1) "facts relating to [Dollar Tree's] Affirmative Defense"; (2) "Dollar Tree's
 20 reinstatement of [the Plaintiff]"; and (3) "[c]ircumstances surrounding plaintiff's
 21 employment with Dollar Tree, including: (a) plaintiff's employment dates, (b) work
 22 schedule, (c) performance, (d) compensation."
 23

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1 the matters sought" by Plaintiff and "to prepare those persons in order that they can answer
2 fully, completely, unevasively, the questions posed . . . as to the relevant subject matters"
3 "whether from documents, past employees, or other sources." *Bank of New York v. Meridien*
4 *BIAL Bank Tanzania Ltd.*, 171 F.R.D. 135, 151 (S.D.N.Y.1997) (citations omitted).

5
6 Here, this would require Dollar Tree's counsel to travel to Virginia to meet with and
7 prepare multiple witnesses who must be both knowledgeable about a given area and
8 prepared to give complete and binding answers on behalf of Dollar Tree. *Id.*, at 150
9 (citation omitted). Counsel would be required to conduct a reasonable inquiry to ensure that
10 all knowledgeable witnesses were located and disclosed, that all documents relevant to the
11 inquiry were located and reviewed, and that all witnesses were prepared to give responses.
12 *See Qualcomm Inc. v. Broadcom Corp.*, Slip Copy, 2008 WL 66932 (2008), a recent case
13 from the Southern District of California that describes the deponent corporation's burden
14 and counsel's obligations in connection with Rule 30(b)(6) notices. Dollar Tree can't
15 reasonably accomplish this with three days notice.

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17
18 In addition to the problems with the timing of Plaintiff's amended deposition notice,
19 a Rule 30(b)(6) deposition is an overly burdensome method of acquiring the information
20 Plaintiff is requesting. It's evident from the topics outlined in Plaintiff's amended deposition
21 notice that the significant expense and burden of a Rule 30(b)(6) deposition(s) could have
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23

1 been avoided with simply interrogatories and requests for production. Plaintiff's amended
 2 notice seeks information relating to Dollar Tree's contentions and defenses, but requiring
 3 Dollar Tree to marshal all of its factual proof and prepare witnesses to be able to testify to
 4 Dollar Tree's defenses would be highly inefficient and burdensome, certainly less efficient
 5 than utilizing interrogatories and discovery requests to secure the information requested by
 6 Plaintiff. *See In re Indep. Serv. Orgs. Antitrust Litig.*, 168 F.R.D. 651, 654 (D. Kan. 1996).
 7 Plaintiff hasn't even taken fact depositions; Dollar Tree offered to produce local witnesses
 8 for fact depositions within the time remaining before the discovery cut-off, but Plaintiff
 9 declined. *See* Decl. Van Dessel, ¶ 6.

12 Since no one employee would have the requisite knowledge to answer questions about
 13 all of the contentions stated in Dollar Tree's pleadings and its defenses, a Rule 30(b)(6)
 14 deposition would require Dollar Tree's counsel to travel to Virginia to meet with and prepare
 15 multiple witnesses who live and work in Virginia. Dollar Tree should not have to incur the
 16 significant burden and expense involved in a Rule 30(b)(6) deposition simply because
 17 Plaintiff failed to timely conduct any discovery through more efficient, practical means.

19 **B. Any Corporate Deposition Of Dollar Tree Must Be Taken At Its Principal**
 20 **Place of Business In Virginia.**

21 Under the circumstances present in this case, a Rule 30(b)(6) deposition is
 22 inappropriate. If, however, the Court disagrees and is inclined to permit Plaintiff to conduct
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1 a corporate deposition, that deposition needs to take place in Chesapeake, Virginia, Dollar
 2 Tree's principal place of business. *See* Wright, Miller & Marcus, Federal Practice and
 3 Procedure: Civil 2d § 2112 at 81 ("A deposition of a corporation by its agents and officers
 4 should ordinarily be taken at its principal place of business."). Dollar Tree has not yet had
 5 an opportunity to conduct the necessary investigation into which witnesses it would be
 6 required to designate, but it is convinced that there would be more than one such witness
 7 located in Chesapeake, Virginia. *See* Van Dessel Decl., ¶ 7.

8 9 10 IV. CONCLUSION

11 For the reasons stated herein, Dollar Tree seeks a protective order precluding
 12 Plaintiff from conducting a Rule 30(b)(6) deposition of Dollar Tree through its agents
 13 and officers.

14 DATED this 24th day of January 2008.

16 WITHERSPOON, KELLEY, DAVENPORT
 17 & TOOLE, P.S.

19 By s/ Geana M. Van Dessel
 20 Geana M. Van Dessel, WSBA No. 35959
 21 gmv@wkdltlaw.com
 22 Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of January 2008,

1. I electronically filed the foregoing MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR PROTECTIVE ORDER with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: **Janet E. Taylor.**
2. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants at the address listed below: **none.**
3. I hereby certify that I have mailed by United States Postal Service the document to the following CM/ECF participant(s) at the address listed below: **none.**

s/ Geana M. Van Dessel

Geana M. Van Dessel

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